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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Nebraska state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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ED 382 537

Antidote: Civic Responsibility

Nebraska Law

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SO 025 044

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Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no Nebraska law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

Aimee and Carrie's parents may be in violation of Nebraska law. It is child abuse for a person to knowingly, intentionally, or negligently cause or permit a child to be (1) placed in a situation that endangers his/her life or health; or . . . (3) deprived of necessary food, clothing, shelter or care. Neb. Rev. Stat. §28-707 (1990). Depending on how frequently Aimee was left in charge and for how long, the parents may be violating subsection one by endangering the girls. Alternatively, they may not be providing adequate care for the children. Child abuse is a class one misdemeanor if committed negligently, a class IV felony if intentionally and knowingly committed. If multiple charges are brought it could result in removing the girls' from their parents home.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

Yes. A minor, person under 21, may possess or have physical control of alcoholic liquor in his or her permanent place of residence. Neb. Rev. Stat. §53-180.02 (Supp. 1992). The governing bodies of counties, cities and villages shall have the power to and regulate, suppress and control additional alcoholic beverage laws related to minors. Id. Consequently, consumption by minors may be prohibited although not expressly stated in the Nebraska Code.

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

Yes. Maria could be charged with possession of marijuana for providing her roommates with information critical to their obtaining the marijuana. It is unlawful to possess a controlled substance absent a valid prescription in Nebraska. Neb. Rev. Stat. §28-416 (1992). A defendant's control or dominion over premises where a controlled substance is located may establish constructive possession. State v. Lonnecker, 237 Neb. 207, 465 N.W.2d 737 (1991). Arguably, Maria has control over the location of the marijuana since without her, her roommates are not able to find a seller. Maria could also be charged with conspiracy for assisting her roommates locate marijuana. One is guilty of criminal conspiracy if s/he, with intent to promote or facilitate the commission of a felony, agrees with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified in the definition of the offense. Neb. Rev. Stat. §28-203 (1991).

4. Have Adam and Alex broken any laws other than those against drinking and fighting?

Yes. It is unlawful for a person to kill another without malice, upon a sudden quarrel, or unintentionally while in the commission of an unlawful act. Neb. Rev. Stat. §28-305 (1990). The twins could be charged under this manslaughter statute since they were unlawfully fighting with Joe and he was killed. Alternatively, they could be charged with a lesser charge such as assault in the third degree which result when an individual knowingly or intentionally causes bodily injury to another person. Neb. Rev. Stat. §28-310 (1991).

5. Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?

Yes, Jose is in violation of Nebraska law which prohibits a minor, person under 21, from having in his/her possession or physical control any alcoholic liquor in any place including public streets, alleys, roads, highways, upon property owned by the State of Nebraska, or inside any vehicle. Neb. Rev. Stat. §53-180.02 (Supp. 1992). TJ is also violating this law.

Carlos can be charged with contributing to the delinquency of a child since he by an act can be said to have encouraged, caused or contributed to the delinquency of a person under 18. Neb. Rev. Stat. §28-709 (1992). A child is said to have become delinquent when s/he violates any law of the state or any city or village ordinance. Id. Further, Carlos is violating Neb. Rev. Stat. §53-186 (1991) for consuming alcohol in "the public streets, alleys, parking areas, roads or highways or inside vehicles while upon the public streets, alleys, parking areas, roads, or highways. . . "

6. Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Dr. Melrose is further violating Nebraska law since he is issuing prescriptions in bad faith, without legitimate medical bases. For a person to knowingly or intentionally distribute,

deliver, dispense or possess with intent to deliver, dispense, distribute or manufacture a controlled substance is a violation of Neb. Rev. Stat. §28-416(1) (1992).

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Further, it is a violation of Nebraska law to knowingly or intentionally possess a controlled substance unless it was obtained directly from or pursuant to a valid prescription or order from a practitioner acting in the course of his/her professional practice. Neb. Rev. Stat. §28-416(3) (1992). Since Danielle took pills from the prescriptions of others while entrusted to deliver full prescriptions she is in violation of this Nebraska law. She may also be charged with theft for taking or exercising control over movable property with the intent to deprive another thereof. Neb. Rev. Stat. §28-511(1) (1992).

8. **Is Renee breaking any law even though she is not selling drugs herself?**

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. § 841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug

trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Additionally, Renee has violated several Nebraska laws. For a person to knowingly or intentionally distribute, deliver, dispense or possess with intent to deliver, dispense, distribute or manufacture a controlled substance is a violation of Neb. Rev. Stat. §28-416(1) (1992). Renee is in violation of this law. Her sentence will be enhanced by one penalty level because she, a person over 18, is knowingly or intentionally employing, hiring, using, causing, persuading, coaxing, inducing, enticing, seducing or coercing a person under 18 to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery or posses with intent to do the same a controlled substance. Neb. Rev. Stat. §28-416(5)(a) (1992). Thus, using her child as the delivery person will enhance her penalty.

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. § 841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. § 844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. Nebraska has not yet dealt with this issue. Under the Model Penal Code, however, Jim's behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989).

10. Has the bartender or owner of Bulldog's Bar & Grill violated any law?

Employers (licensees) are liable for the acts of their employees according to the Nebraska Code. Neb. Rev. Stat. §53-1102 (1991). There appears to be no prohibition in Nebraska re: service of alcohol to visibly intoxicated individuals. Despite a lack of regulatory or criminal penalties, however, the server may be civilly liable for injuries or damages proximately caused by service of alcoholic beverages.

Lesson 2

CRIMINAL JUSTICE STATISTICS: DRUG AND ALCOHOL RELATED OFFENSES UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990 A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	• imprisonment for 5 to 50 years
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	• imprisonment for up to 5 years, and/or • fine of up to $10,000
First Offense: Codeine - Possession - 200 mg	• imprisonment for up to 5 years, and/or • fine of $10,000
Second Offense: Marijuana - Possession - 50 kg	• imprisonment for up to 5 years, and/or • fine of $10,000
Third Offense - Methamphetamine - Possession - 100 g	• imprisonment for up to 5 years, and/or • fine of $10,000

Cite: R.R.S. Neb. § 28-105.

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Section 39-669.07 makes it illegal for any person to drive while under the influence of alcoholic liquor or when his/her blood concentration is 0.10 or more.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

The Nebraska code does not distinguish between DWI and DUI.

4. **What are the penalties for being convicted of DWI? DUI?**

Section 39-669.07 mandates the following penalties:

CONVICTION	PENALTY
first	• revocation of license and driving privileges for 6 months (if one is given a suspended sentence or put on probation, s/he is barred from driving for any reason for 60 days)
second (within 10 years)	• license revoked for one year (if one is put on probation or given a suspended sentence s/he is barred from driving for any reason for six months and must be jailed for 48 hours)
third or subsequent conviction (within 10 years)	• license revoked for 15 years (if one is given probation or a suspended sentence one cannot drive for year and must be jailed for 7 days)

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under §39-669.08 any person who drives on the roads of Nebraska gives his/her consent to a breath test. If person refuses s/he will be arrested and lose driving privileges for 6 months. If the individual has one prior refusal within ten years, his/her license will be suspended for 1 year. If there are 2 or more refusals in 10 years, the license will be revoked for 15 years.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated.**

Under §39-669.07 a BAC of 0.10 indicates legal intoxication.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. Nebraska does not lower the BAC for persons under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

False. While there is no section that discusses open containers per se, § 53-186 makes it unlawful for any person to consume alcoholic beverages while inside a vehicle that is on a public road or parking area. Under §53-180.02 it is illegal for a minor to possess alcohol on the roads of Nebraska.

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the **March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,**

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only

IL: minors <17 cannot drive between 11pm-6am Mon-Thur and

12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.